IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3966 of 1996

SMT. PUSHPA JAIN
V/S
STATE & ORS

Mr. DD THANVI, for the appellant / petitioner

Mr. OP BOOB, AGA, for the respondent

Date of Order : 10.12.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioner by this writ petition seeks to challenge the orders, Annex.4, 5 and 6, and has prayed for direction to accept the surrender of mining lease w.e.f. 4.8.88 with immediate effect, as per provisions of Rule 18 of the Rules of 1986, and for declaration that the petitioner is not liable to pay any dead rent after surrendering the mining lease w.e.f. 4.8.88.

The necessary facts are, that the petitioner was granted mining lease with respect to the area in question for a period of 10 years from 18.7.88 to 17.7.98. According to the petitioner, on 4.8.88 the petitioner has sent a letter under certificate of posting intimating the surrender of lease with immediate effect. Then it is alleged that since the petitioner was residing at Jaipur,

it could not be possible for her to be present at the office of the Mining Engineer, or the Registering Authority at the time of execution, hence she had given a special power of attorney to one Rakesh Prakash on 9.10.87 itself, who also sent a registered letter for surrender on 4.8.88 itself, which has been produced as Annex.3. Then it is alleged that since at that time advance dead rent has already been paid, obviously there were no dues outstanding, apart from the fact that National Savings Certificate was also lying as security. With these facts, it is alleged, that on 7.10.90 notice was issued by the respondent No.3, pointing out the dead rent to the tune of Rs.14,543/-to be outstanding, few more deficiencies/ defaults were pointed out, and that for non-compliance of the said notice, the mining lease was sought to be cancelled vide order dated 31.12.91, which is produced as Annex.4, and is under challenge. This order was challenged by way of appeal, alleging inter-alia, that the petitioner had already surrendered lease on 4.8.88 itself, and that the notice mentioned above dated 7.10.90 was not served upon the petitioner. The learned Appellate Authority vide order Annex.5 dated 5.1.94 dismissed the appeal, holding that the notice was properly sent on the address given in the application for grant of mining lease, which is proper. Then the order was further challenged in further appeal before the State Government, and that appeal was also dismissed vide order Annex.6 dated 23.4.96. It is pleaded

that while dismissing the appeal, it was found, that mere submission of surrender application does not mean that it stood accepted under the provisions of the Rules, and thus, the petitioner was held liable to deposit dues upto 12.1.92. It is these orders Annex.4, 5 and 6, which are under challenge.

The strongest ground given to challenge these orders is, that since the petitioner had already surrendered the lease vide Annex.2 and 3, and since at that time there were no dues outstanding against the petitioner, the petitioner had indefeasible right to surrender, which surrender was required to be accepted with immediate effect, and therefore, no further liability could be attracted upon the petitioner.

A reply has been filed on behalf of the respondent, contending inter-alia, that the communication (Annex.1) was never received by the officers concerned, nor Annex.3 was received by anyone, rather it was on 12.9.88 that the power of attorney of the petitioner submitted entire relevant documents, alongwith the original stamps of Rs.1280/-, in the office of Assistant Mining Engineer, which fact obviously negatives the theory of sending the communications, Annex.1 and 3. The forwarding letter dated 12.9.88 has been produced as Annex.R/1. It was also pleaded that registered letters, if sent, they do have record of

the Postal Department, but the petitioner has not produced any document about booking of the letter, or the acknowledgement receipt, which according to the respondent renders the writ petition liable to be dismissed, for "supressio veri suggestio falsi". Various other pleadings have been taken. However, the substance is, that application for surrender was never submitted. Then it is also pleaded that the notice dated 8.10.90 was sent under registered cover, which was received unserved.

These facts in the reply have not been controverted by the petitioner by filing any rejoinder. May be that filing of rejoinder may not be necessary.

I have heard learned counsel for the parties and considered the material as available above.

So far as the theory of the petitioner having surrendered the mining lease vide Annex.1 and 3 is concerned, on the face of it, it does not inspire any confidence whatever, firstly for the reason, that the petitioner has not produced the original postal certificate i.e. certificate of posting, and from the photostat copy it is not decipherable, as to from what place it was sent, and so far Annex.3 is concerned, apart from anything else, at least the postal booking receipt, of having dispatched the letter on 4.8.88, was required to be produced, to show,

that from the side of the petitioner, this letter was dispatched on the date, it purports to have been sent. These omissions are significant in the background of the fact as found by the learned Additional Collector (Mines), that the lease deed after its due registration was submitted on the side of the petitioner on 12.9.88, by giving out, that the delay in resubmitting occurred because the husband of the petitioner was ailing. It has been found by the learned Additional Director that if the story of surrender, having been made on 4.8.88, had any trace of truth, there was no occasion for submitting the lease deed after registration on 12.9.88. It is a different story, that it has also been found, that the document available at page 71 of the file, being the surrendering letter, does show, that the date has been interpolated from 4.8.93 to 4.8.88. Then in Annex.6 it has been found, that even if it were to be assumed, for the sake of argument, that request for surrender was made on 4.8.88, that by itself does not mean, that it was accepted on that very day itself.

So far Rule 18 is concerned, may be that it does confer a right on the petitioner in the nature of an indefeasible right to have the lease deed surrendered w.e.f. the date of request of surrender, but then no order of acceptance of such surrender has been produced by the petitioner, nor is even alleged to have ever been received. Admittedly, after the alleged Annex.1 and 3, the petitioner

never approached the respondents to pursue the matter of surrender. In this background, it is clear from the reply taken by the respondent, that as a matter of fact, the stamps worth Rs.1280/- were also submitted on 12.9.88. It does not stand to reason at all, that if the petitioner had at all surrendered the lease deed on 4.8.88, there could be any occasion for submitting the stamps on 12.9.88, which fact has not been controverted on the side of the petitioner. From Annex.R/1 it is also clear, that it is given out therein, that the delay occurred because the husband of the petitioner was ailing. Not only this, it is also mentioned in Annex.R/1, that the lease deed was got registered on 18.8.88. Significantly, this again is a date falling after 4.8.88. Thus, to repeat, that if the surrender was made on 4.8.88, there was no occasion for the petitioner to have the lease deed registered on 18.8.88, at least at that time, she could have returned the lease by making reference to the letter of surrender.

Thus, apart from the fact, that the question as to whether the petitioner had surrendered the lease vide Annex.1 and 3, or not, is a pure question of fact, having been decided by the two learned authorities below against the petitioner, which could not be interfered with by this Court in writ jurisdiction, still I have ventured to appreciate the material over again, and even after such re-appreciation, I am at one with the finding, and find, that

the theory cannot be believed on the face of it, and has rightly been disbelieved.

The net result is, that the petition has no force and is dismissed.

(N P GUPTA),J.

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